

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Billed Party Preference for)
InterLATA 0+ Calls)
)

CC Docket No. 92-77

**RESPONSES OF ONCOR COMMUNICATIONS, INC. TO
SUPPLEMENTAL COMMENTS ISSUED BY THE COMMISSION**

ONCOR COMMUNICATIONS, INC.

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SUMMARY

The following is a summary of Oncor Communications, Inc.'s responses to each of the questions included in the Common Carrier Bureau's October 10, 1996 Public Notice issued in CC Docket No. 92-77 (In the Matter of Billed Party Preference for InterLATA 0+ Calls).

1. In many industries, including portions of the telecommunications industry, price disclosure at the time of purchase is not the normal practice. Examples of such industries include most utility-type services (*e.g.*, electric power, gas, water and sewer service) and many professional services (*e.g.*, plumbing and other maintenance services, medical and legal services). What is significant is not whether there is routine price disclosure but whether there are procedures available for consumers to obtain price information and to make informed choices. None of those industries are subject to more comprehensive requirements to ensure consumers' rights to price information than the interstate 0+ calling industry.

2. The availability of technologies to provide on-demand call rating would depend on whether a carrier uses switch-based or non-switch-based call rating. Information about switch-based technology should most appropriately be obtained from switch manufacturers. Available technology for non-switch-based call rating systems would depend upon the sophistication of the work stations used in the call handling process.

3. Oncor is not aware of any on-demand price disclosure requirements in any markets outside the United States.

4. Oncor is not aware of any studies which measure how much delay is acceptable to consumers. However, the Commission previously has avoided requirements which forcibly subject consumers to call completion delay. For example, with respect to 800 service access, the Commission deferred implementation of the database method (allowing for 800 number portability) until the delay could be reduced to 1.5 to 3 seconds. It is likely that mandatory

price disclosure would delay call completion by more than 3 seconds.

5. The Commission should not require that existing equipment be replaced to accommodate a price disclosure requirement. In the past, the Commission consistently has avoided requiring replacement of telecommunications equipment to accommodate new policies. Examples include independent telephone company switches to provide equal access, television receivers capable of receiving UHF signals, satellite earth stations which meet two degree spacing requirements, and, most recently, television sets with V-Chips. The Commission should not depart from that policy in this instance.

6. Oncor has no information regarding the percentage of 0+ calls which are originated from correctional institutions.

7. In its recent Payphone Reclassification Order, the Commission concluded that the market for services from payphones, including 0+ calling services, is sufficiently competitive that even the Bell Operating Companies with their dominant market shares would not be able to raise or sustain rates above competitive levels. Further, the Commission, consistent with Section 276 of the Communications Act, articulated a desire to eliminate regulatory constraints on that market. It is difficult to imagine any action more antithetical to the policies underlying Section 276 and the Commission's policies as stated in the Payphone Reclassification Order than the imposition of a system of mandatory rate caps, rate benchmarks, or rate disclosure requirements on an industry which operates in an increasingly competitive, and less regulated, marketplace.

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By public notice issued October 10, 1996,¹ the Common Carrier Bureau has requested additional information in the above-captioned proceeding. The supplemental information requested by the Commission is directed at the proposal set forth in the Notice of Proposed Rulemaking in this proceeding that all providers of 0+ interLATA service be required to provide rate information at the outset of each call.² In its comments in this proceeding, Oncor Communications, Inc. (Oncor) opposed imposition of mandatory rate disclosure requirements on constitutional, legal and policy grounds. However, it stated that if the Commission felt compelled to require rate disclosures, those requirements should be applicable to all providers of 0+ services, and should not be keyed to some arbitrarily-established rate "cap" or rate "benchmark" set by the Commission based on rates of other carriers. Oncor hereby responds to each of the questions contained in the October 10 public notice:

¹Public Notice - Common Carrier Bureau Seeks Further Comment on Specific Questions In OSP Reform Rulemaking Proceeding (*In the Matter of Billed Party Preference for InterLATA 0+ Calls*), DA 96-1695, released October 10, 1996.

²Billed Party Preference for InterLATA 0+ Calls (*Second Further Notice of Proposed Rulemaking*), FCC 96-253, released June 6, 1996, at ¶15.

- 1. Are there any industries in which price disclosure to consumers at the point of purchase is not the normal practice? If so, what are those industries and what are the particular circumstances surrounding the development of those industries?**

Yes. There are numerous industries in which price disclosure to consumers at the point of purchase is not the normal practice. Indeed, the telecommunications industry itself is one example of an industry in which prices often are not routinely disclosed to consumers at the point of purchase. Millions of callers initiate local and long distance telephone calls from their homes and businesses every day without knowledge of the prices which they will be charged for those calls when they are made. It is doubtful that more than a small percentage of telephone service customers, if asked, would know the monthly fees and charges applicable to their local exchange service or the per minute or per call rates applicable to their toll services. Many carriers offer what is commonly referred to as "casual calling." These are calls placed by callers who have not previously established accounts with the carrier. Such calls are initiated by the caller dialing a carrier's access number (*e.g.*, a 10XXX, 1-800, or 950 number). The call is completed by the carrier and billed either by the carrier or by another billing entity on behalf of the carrier. Typically, the caller is not informed of the applicable rate for such casual calls until it receives the invoice for the calls.

Similarly, most utility-type services do not involve real time price disclosure. Consumers are not advised of the charges for electric power -- or natural gas -- or water -- or sewer -- or refuse removal -- at the time that those services are provided. In addition, many professional services are provided in a manner such that the prices for the services are not known to consumers until after services have been rendered. Examples include medical and dental services, plumbing, electrical, and other household maintenance and improvement services, and legal services.

What is important is not whether there is real time price disclosure for those services, but that consumers have a right to inquire about prices and to obtain that price information if they wish to have it. None of the aforementioned industries are subject to more comprehensive requirements to ensure consumers' rights to price information at the time of service than the interstate 0+ calling industry. Pursuant to the requirements of the Telephone Operator Consumer Services Improvement Act of 1996 (TOCSIA),³ providers of 0+ services must, *inter alia*, disclose immediately to consumers, upon request, and at no charge to the consumers a quote of their rates or charges for the calls, the methods by which such charges will be collected, and the methods by which complaints concerning such rates, charges, or collection practices will be resolved.⁴ Consumers' rights to rate information are further assured by the companion TOCSIA requirement applicable to aggregators that there be posted on or near the telephone the carrier's name and toll-free number and a statement that rates are available upon request and that customers have a right to that rate information.⁵

2. **What kinds of technologies (including payphone equipment and associated software) are currently available to provide on-demand call rating information for calls from payphones, other aggregator locations, and phones in correctional institutions that are provided for use by inmates? Commenters should discuss the anticipated declining cost of these technologies, assuming a wide-spread demand for these services.**

Oncor provides relatively little service to correctional institutions and is not familiar with any technologies or equipment developed specifically for those facilities. As for the technological ability to do on-demand call rating from payphones and other aggregator locations,

³47 U.S.C. §226

⁴47 U.S.C. §226(b)(1)(C)(i - iii).

⁵47 U.S.C. §226(c)(1)(A)(i - ii).

the ability to provide such call rating would depend on whether a carrier's call rating and call processing functions are performed internal or external to carrier switches. Oncor believes that most OSPs rely on their switches (or their vendors' switches) for performance of the call rating functions. Information about the ability of switches to perform call rating and to provide rate disclosure information would most appropriately be obtained from the switch manufacturers who are in the best position to describe existing and future capabilities in those areas. Some carriers do their own call processing from operator center work stations that are external to their switches. Depending upon the sophistication of those work stations, modifications could be made to enable them to provide rate information. Of course, the information provided could not include the specific prices for calls since the duration of the calls would not be known prior to completion.

3. **Are there any telecommunications markets outside the U.S. that already make use of price disclosure prior to call completion, for example, in the U.K.? If so, please provide the technological and financial details behind the implementation of these services and any indication as to the cost and benefits from the perspective of consumers.**

Oncor offers its services primarily from the United States. It also offers some originating service from Mexico which does not have any pre-call price disclosure requirements. Oncor has no knowledge of rate disclosure requirements in other countries.

4. **Some commenters have claimed that price disclosure prior to call completion would create an unacceptable delay to consumers. Are there any studies that substantiate or dispute this contention and are those studies available? Are there any studies available that provide indications of consumer satisfaction or dissatisfaction with 0+ services provided in this fashion?**

Oncor is not aware of studies which quantify how much delay is "acceptable" to consumers. Nonetheless, it is generally recognized that consumers object to delay in call

completion. Indeed, provision of service to consumers in an efficient manner without unnecessary delays is among the statutory purposes of the Communications Act.⁶ Previously, the Commission has recognized and has been sensitive to the fact that consumers do not accept delays in service, and has avoided taking actions which force such service delays on consumers. For example, in the case of 800 service, the Commission refused to require replacement of the NXX access plan -- an arrangement which limited consumers' ability to change their 800 service carriers -- with a data base access plan which made possible 800 number portability until the local exchange industry was able to reduce post-dial delay to 1.5 to 3 seconds.⁷ Oncor deems it highly unlikely that OSP rate disclosures could be provided in a manner which would increase call completion time by only 1.5 to 3 seconds.

Under current requirements, all consumers are entitled to rate information upon request. Those consumers who desire such information prior to placing calls may ask for it. That information will be made available to them without imposing delays upon other consumers who do not desire that information and who are unwilling to experience call completion delay.

It has been Oncor's experience that some consumers desire rate information at the beginning of calls, and that many other consumers do not. If consumers are allowed to obtain rate information upon request, those consumers who desire that information and who are willing to incur the delay in call completion to obtain that information will be able to do so. Those consumers who do not want pre-call rate information and who want their calls completed as

⁶See 47 U.S.C. §151. Among the statutory purposes of the Act is the following: ". . . to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service" (emphasis added).

⁷See Provision of Access for 800 Service (Report and Order), 4 FCC Rcd 2824 (1989) at ¶¶ 20, 38-40.

expeditiously as possible without extra delay should not be forced to experience the delay in order to obtain the pre-call rate information which they neither need nor want. For that reason, Oncor believes that every caller should have the right to request rate information, but that callers should not be required to incur the delay and bear the additional costs associated with carriers providing that information if they do not want it.

5. If some or all of embedded base equipment and software are incapable of providing audible notice to consumers for on-demand call rating, what time period would be reasonable for substituting equipment and software that is capable of doing so?

By this question, the Commission seems to be asking whether carriers should be required to replace equipment and software if audible rate disclosures cannot be provided using existing equipment, and, if, so, how long should carriers be afforded to make the necessary equipment replacement. In Oncor's view, an appropriate starting point for addressing this question is the Commission's previous determinations in situations where equipment replacement obligations were necessary to accommodate new policies and regulations. One very comparable situation involves the Commission's imposition of equal access obligations on "independent" local exchange carriers (LECs), *i.e.*, those telephone companies who were not subject to the equal access requirements of the Modification of Final Judgment in United States v. American Telephone and Telegraph Company⁸ or the GTE consent decree.⁹ In 1985, the Commission determined that independent LECs, like the Bell Operating Companies (BOCs) and the GTE Telephone Operating Companies, should be required to provide equal access in order to promote interexchange competition throughout the country. However, the Commission held that those

⁸552 F. Supp. 131 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

⁹United States v. GTE Corporation, 603 F. Supp. 730 (D.D.C. 1984).

LECs, unlike the BOCs and the GTE companies, should not be subject to specific time schedules for replacement of equipment in order to provide equal access. Instead, they would not be subject to any equal access obligations until such time as they chose to replace existing switching equipment with stored program control switches, and then, only within three years of receipt of a bona fide request for equal access.¹⁰ In other words, the Commission respected the assertions of the independent LECs that imposition of switch replacement requirements on them in order to accommodate equal access would be costly and it declined to require those LECs to bear the replacement costs before they were otherwise ready to do so.

Similarly, prior to equal access, the long distance services of competing long distance carriers (*i.e.*, all carriers other than AT&T) could not be used with rotary dial telephones. Nonetheless, the Commission never required that rotary dial telephones be replaced with Touch-Tone telephones so that consumers could have a choice of carriers.

Even in non-telephony areas, the Commission has avoided imposing equipment replacement obligations. For example, in 1962, Congress enacted the All Channel Receiver Act which authorized the Commission to require that all television sets be capable of receiving UHF as well as VHF channels.¹¹ The Commission never sought to require the replacement or modification of existing television sets in order to receive UHF channels. In 1983, the Commission amended its satellite earth station antenna performance standards codified at Section 25.209 of the Commission's rules to accommodate its two degree satellite orbital spacing policy.¹² Again, the Commission declined to require modification or replacement of existing

¹⁰See MTS and WATS Market Structure, 100 FCC2d 861 (1985).

¹¹P.L. 87-529, codified at 47 U.S.C. §303(b).

¹²Licensing of Space Stations in the Domestic Fixed-Satellite Service, 54 RR2d 577 (1983).

earth stations to comply with the new spacing policies. The 1996 Telecommunications Act imposes a requirement that manufacturers of television sets include a feature designed to enable viewers to block display of programs with certain ratings (*i.e.*, the so-called "V-Chip").¹³ Here again, the requirement is prospective only. It is not intended to require costly modification or replacement of existing television receivers, and the Commission is afforded discretion to determine an effective date for the requirement applicable only to newly-manufactured equipment, not less than two years following enactment of the 1996 Act.

Based upon the foregoing illustrative examples, the Commission consistently has sought to achieve a reasonable balance between advancing new policies and new technologies and avoiding premature obsolescence of otherwise usable equipment. There is no reason for the Commission to depart from that policy in this situation. Any requirements governing price disclosure should not become effective until carriers have equipment in place which can conform with such requirements.

6. What percentage of interstate 0+ calls do calls from correctional institutions constitute, both in quantity and dollar volume, over the last 5 years?

Oncor provides minimal service from correctional institutions and it has no independent knowledge of the size of the market for 0+ calls from correctional institutions, either in quantity or dollar volume.

7. What effects, if any, will the recent Report and Order in *In the Matter of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, CC Docket Nos. 96-128, 91-35, FCC 96-388 (released September 20, 1996) have on this proceeding?

In the Pay Telephone Reclassification Order referenced in Question 7, the Commission

¹³47 U.S.C. §303(x).

notes that the 1996 Telecommunications Act fundamentally changes telecommunications regulation by erecting a "pro-competitive deregulatory national framework designed to accelerate the rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."¹⁴ With particular respect to the pay telephone market, the Commission identified the twin goals of Section 276 of the Act as "promot[ing] competition among payphone service providers and promoting the widespread deployment of payphone services to the benefit of the general public."¹⁵ Further, the Commission stated that it seeks to eliminate regulatory constraints which inhibit the ability to enter and exit the payphone market and to compete for the right to provide services to customers through payphones.¹⁶ Inevitable consequences of these changes will include increased competition for the provision of operator-assisted calling services from payphones, increased choices of such services, and downward pressure on prices for those services.

It is difficult to imagine any regulatory constraint more antithetical to the right to provide services to customers through payphones than an arbitrarily-imposed rate disclosure requirement that would be applicable to some providers, but not others, depending upon how the Commission views certain providers' prices relative to others at any point in time. Yet, that is one of the Commission's proposals in the instant proceeding.

Moreover, in the Payphone Reclassification Order, the Commission determined that it would be in the public interest to allow the Bell Operating Companies (BOCs) to negotiate with

¹⁴S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1966), as quoted at Pay Telephone Reclassification Order, *supra* at ¶2.

¹⁵47 U.S.C. §276(b)(1), Payphone Reclassification Order, *supra*.

¹⁶*Id.* at ¶2.

payphone location providers for the right to select the interexchange service providers from public telephones, notwithstanding the incontrovertible fact those BOCs retain market dominance in the provision of local services, in general, and pay telephone services, in particular, throughout their regions.¹⁷ Even though the BOCs have not yet satisfied the required conditions established by the Commission in order to compete to select interexchange services for location providers (*e.g.*, filing and approval of Comparatively Efficient Interconnection plans), several BOCs already have begun to aggressively promote to location providers their forthcoming ability to compete in this market.¹⁸ Thus, the marketplace is feeling the impact of BOC presence even before BOCs are permitted either to negotiate with location providers for selection of interexchange services or to provide those services themselves.

In determining that the BOCs, subject to certain safeguards, should be allowed to negotiate with location providers regarding the selection of interexchange carriers from pay telephones, the Commission acknowledged that such competition could have the effect of lowering location owner commissions, and thereby lowering calling rates.¹⁹ Moreover, the Commission concluded that competition in the provision of payphone services is sufficiently strong to ensure freedom of choice concerning the selection of interLATA carriers from

¹⁷Payphone Reclassification Order, *supra* at ¶¶208-253.

¹⁸See, e.g., Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996 (Order on Reconsideration), FCC 96-439, released November 8, 1996 at ¶¶ 236-237 ("Payphone Reconsideration Order"). There, the Commission acknowledged that it has received allegations that at least one Bell Operating Company, had begun to enter into contracts with location providers regarding the selection of interLATA carriers, notwithstanding the fact that the BOC has not yet complied with the safeguard requirements promulgated by the Commission.

¹⁹*Id.*, at ¶241.

payphones.²⁰ Indeed, the Commission concluded that the market for calling services from payphones is so competitive that even the BOCs would be unable to raise and sustain prices above competitive levels, irrespective of their dominant market shares.²¹

The Commission's findings and conclusions as set forth in the Payphone Reclassification Order and the Payphone Reconsideration Order and the requirements adopted in those orders demonstrate persuasively that the Commission already views the payphone services market and the allied market for interexchange services from payphones as competitive, and that the Commission anticipates that the policies and regulations adopted in that order, primarily those allowing the BOCs to compete to select interexchange service providers from payphones, will further enhance competition in that market, and thereby obviate any need to impose rate "benchmarks," rate "caps," or rate disclosure requirements on an industry that is otherwise deregulated and subject to competitive market forces

Respectfully submitted,

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²⁰*Id.*, at ¶ 243.

²¹Payphone Reclassification Order, *supra* at ¶ 232. See also, Payphone Reconsideration Order, *supra* at ¶ 222.

CERTIFICATE OF SERVICE

I, Antoinette R. Mebane, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "*Responses of Oncor Communications, Inc. to Supplemental Comments Issued by the Commission*" in Docket 92-77, was served this 13th day of November, 1996, upon the following:

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